



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

December 23, 2009

Ms. Susan K. Haberstroh
Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 13 DE Reg. 708 [DOE Proposed Accountability Regulation]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOEs) proposal to amend its accountability regulation published as 13 DE Reg. 708 in the December 1, 2009 issue of the Register of Regulations. As background, SCPD submitted comments on a less sweeping set of proposed accountability regulations in June, 2009. See attached June 23, 2009 letter for facilitated reference. Rather than adopting final regulations based on that set of proposed standards, the DOE is publishing the current set of comprehensive revisions which are highly technical and detailed. Council has the following observations.

First, §§1.1 and 2.1 refer to "career technical school district" while §1.2, definition of "district", refers to a vocational technical school district. Assuming these are the same entities, the DOE may wish to use consistent references.

Second, in §1.2, definition of "local educational agency", the DOE may wish to insert ", middle" after the term "public elementary" and insert ", middle school" after the term elementary school". The regulations contain multiple references to "middle schools". See, e.g., §§2.6.2 and 7.6.2.4.2.8.2.

Third, the SCPD addressed §3.1.1 in 2006. Consistent with attached articles and letters from 2006, the DOE originally planned to count the DSTP scores of children placed in ILCs and special schools with their home schools. Several districts objected and the Red Clay School District sued the DOE. Red Clay was "troubled" that the Warner School was sanctioned partly due to the low scores of some students placed at the Richardson Park ILC. The DOE then offered districts the option of counting the scores with the home school or the receiving school. In response to SCPD and GACEC concerns that the new policy would promote "dumping" of special education students to alternate sites, the DOE added the following sentence to the final regulation: "Further provided, the State Department of Education will monitor the assignment of students to ensure students are appropriately assigned." In its 2009 proposed regulation, the DOE

deletes this sentence in its entirety. Consistent with its 2006 position, SCPD strongly opposes the deletion of the above sentence. The “bottom line” is that schools have an incentive to “dump” perceived low-achieving special education students to alternative sites to maintain higher average scores in the sending/home school. This undermines the IDEA’s strong preference for education of students in their home schools. It is also anomalous that non-special education students placed in alternative schools are counted with their home school. See §3.1.2.

Fourth, the DOE proposes to delete an authorization to use a student’s highest score to calculate AYP if a student retakes a portion of the DSTP after a summer program. No rationale is provided. It would be preferable to retain the authorization since it provides an incentive for schools to promote student participation in remedial summer programs.

Fifth, the grammar in §7.1.3 merits review. The section reads as follows:

A school that is in Under Improvement Phase 1 shall:

...Schools designated as Title 1 shall fund the transportation costs for students whose parents choose to enroll them in a different school, as required by the ESEA.

Sixth, in §7.6.2.3.1.1, consider editing the reference to “...grant the new principal sufficient operational flexibility...”

Seventh, §10.2 directs schools identified as “Under Improvement” to provide a notice to parents of several options, including “their right to enroll their child(ren) in a different school” “before the first day of the upcoming school year”. This timeline would allow a district to provide notice the day before school opens which, as a practical matter, would make it difficult to opt to send a child to a different school. An earlier date (e.g. July 15) for the notice should be required.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

Sincerely,



Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Lillian Lowery
Dr. Teri Quinn Gray
Ms. Martha Toomey
Ms. Paula Fontello, Esq.
Ms. Mary Cooke, Esq.
Mr. John Hindman, Esq.
Mr. Charlie Michels
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor’s Advisory Council for Exceptional Citizens

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